IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2513 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDGAR LAGUGAR

Versus

AGEW STEEL MFG. PVT. LTD.

Appearance:

None present for Petitioner No. 1-56

M/S TRIVEDI & GUPTA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 05/09/2002

ORAL JUDGEMENT

#. By filing this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality of judgment dated 13th January, 1992, rendered by the learned Principal Judge, City Civil

Court, Ahmedabad, in Civil Appeal No.18 of 1991, which was filed under Section 17 of the Payment of Wages Act 1936 (hereinafter referred to as "the Act"), by which the order dated 26th September, 1990, passed by the authority constituted under the provisions of the Act dismissing the application submitted by the petitioners alleging illegal deduction from the salary and for the recovery of their wages, is upheld.

#. The petitioners are the workmen employed by the respondent-Company. During the relevant period, all the petitioners did not attend to their work for the part of the days and did not give production as agreed by and between the respondent-Company and the Union representing the workmen as per the settlement. Therefore, in accordance with the provisions of the Model Standing Orders, after considering the proportionate attendance of the petitioners during the said period, the salaries were paid to them in proportion to the production given by them. The grievance of the petitioners was that the wages payable to them from February 15, 1990 to February 28, 1990, were illegally deducted despite they having worked for full eight hours in a day. It was also their case that the wages payable to them were not linked with the production and therefore, deduction made by the respondent-Company was illegal. What was asserted by the petitioners was that the respondent-Company had not followed the principles of natural justice before deducting the wages payable to them and therefore, they were entitled to full wages for the work done by them during the relevant period. Under the circumstances, the petitioners instituted Payment of Wages Application No.171 of 1990 before the authority under the Act and prayed that the deduction of wages made by the respondent-Company should be declared to be illegal and the respondent-Company should be directed to pay full wages to them for the relevant period.

#. On notice being served, the respondent-Company filed reply at Ex.6 contending inter-alia that the wages were not deducted illegally and as the petitioners did not give production as agreed nor attended to the work and were keeping away from the actual work, they were not entitled to the relief claimed in the application. According to the respondent-Company, the petitioners had resorted to unfair labour practice and were entitled to the wages only in proportion to the work done by them. What was claimed by the respondent-Company was that the wages were paid to the petitioners in accordance with the Model Standing Orders applicable to the respondent-Company and therefore, the application was

liable to be dismissed.

#. On appreciation of evidence adduced before it, the competent authority concluded that wages were paid to the petitioners according to the work put in by them for number of hours and as the petitioners did not give sufficient production, they were not entitled to the relief claimed in the application. In view of the said conclusion, the competent authority dismissed the application by an order dated September, 26, 1990.

#. Feeling aggrieved by the said order, the petitioners preferred Civil Appeal No.18 of 1991 before the City Civil Court, Ahmedabad, as contemplated by Section 17, sub-section (2) of the Act. The learned Principal Judge, City Civil Court, Ahmedabad, who heard the Appeal, has dismissed the same by judgment dated January 13, 1992, giving rise to the present petition.

#. The Board indicates that this matter has been notified for final hearing on eleven occasions. The learned counsel for the petitioners has not remained present to argue the petition. The earlier order dated April 11, 2002, passed by the learned Single Judge of this Court also indicates that when the matter was called out for final hearing on that day, the learned advocate for the respondent was present but none was present on behalf of the petitioners and therefore, the matter was adjourned. This is an old matter of 1992. Under the circumstances, I propose to dispose of the petition with the assistance of learned counsel for the respondent-Company, who has read out the entire petition filed by the petitioners as well as two orders which are impugned in the petition.

#. From the record of the case, it is evident that on behalf of the petitioners, two witnesses were examined, namely, (i) Mr.Ramabhai Purshottambhai at Ex.17, and (ii) Mr.Govindbhai Dalubhai at Ex.19, whereas on behalf of the respondent-Company, (i) Mr.B.P.Shah, the Managing Director at Ex.22, and (ii) Mr.Pankajkumar Bhailalbhai, the Works Manager at Ex.46, were examined. From the oral and documentary evidence adduced by the parties, it is evident that wages were paid to the petitioners according to the work put in by them for number of hours. It is not in dispute that the production during the period in dispute was not as per the terms of settlement which was approved by the Industrial Tribunal vide its award dated February 15, 1985, while deciding Complaint (I.T.) No.138 of 1981, which was filed in Reference (I.T.) No.467 of 1978. In other words, it is an admitted position that

though the petitioners had physically remained present in the factory premises for eight hours, the production during the relevant period had declined. There is no manner of doubt that wages are payable in proportion to the work put in by the workmen and mere physical presence in the factory premises would not be the relevant criteria for payment of wages. As the entitlement of the workers to get wages is dependent on the actual work put in by them, I am of the opinion that no error was committed either by the authority under the Act or by the appellate authority in rejecting the claim advanced by the petitioners.

#. The plea that individual notices were not given to the petitioners before deducting the wages payable to the concerned petitioner and therefore the action of deducting wages should have been treated as illegal, is devoid of merits. When there is a concerted action, issuance of general notice would be sufficient and service of individual notice is not necessary. The record of the case shows that necessary notice was displayed by the respondent-Company on February 24, 1990, drawing the attention of the workmen that they were wilfully not attending their duties since January 28, 1990, because of which, the production had declined and that their wages would be deducted if unfair labour practice adopted by them was continued. Having regard to the facts of the case, it is difficult to hold that principles of natural justice were violated by the respondent-Company and therefore, the petitioners would be entitled to the relief claimed in the application which was submitted before the authority under the Act.

#. The points which have been raised by the petitioners stand squarely answered by the decision of the Hon'ble Supreme Court in Bank of India v. T.S.Kelawala & ors. reported in JT 1990(2) SC 339. It is to be remembered that the present petition is filed under Article 227 of the Constitution of India. The authority under the Act as well as the appellate forum, after taking into consideration all the pros and cons of the matter and after proper appreciation of the oral as well as documentary evidence on record and the production reports of each petitioner, have recorded a finding of fact that the petitioners had deliberately and wilfully remained away from the work for part of the days and had failed to give production as agreed upon. Whether the petitioners had deliberately and wilfully remained away from the work for part of the days and had failed to give production as agreed upon or not is a pure question of fact and not liable to be interfered with in a petition filed under

Article 227 of the Constitution of India. It is well settled that while exercising powers under Article 227 of the Constitution of India, the High Court does not act as an appellate Court and therefore, the concurrent findings recorded by the authorities below which are borne out from the record of the case will have to be upheld. No case is made out by the petitioners to interfere with either the order passed by the authority under the Act or the appellate authority and therefore, the petition is liable to be dismissed.

##. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J.M.Panchal, J.)

(sunil)